

S.B. Civil First Appeal No.461/06
Chairman, Jaipur Vidyut Vitaran Nigam Ltd. & Ors.
Vs.
Smt. Gheesibai & Ors.

Date of Judgment : 02/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Neeraj Batra, for appellants

Instant appeal has been filed against the award dated 5th September, 2005 whereby a sum of Rs.2,85,000/- was awarded as compensation to the claimants under the Fatal Accident Act, 1855. The appeal has also been filed with the delay of 8 days.

While examining the application filed u/s.5 of Limitation Act, I consider it proper to take note of merits of the appeal as well.

The claimants are wife and five minor children of deceased Mohan Lal, aged 35 years died in a fatal accident on 30th August, 2003. The claim set up by the claimants before the learned District Judge was that the deceased Mohan Lal while returning back from his work crossing Bhanwariakhal, there were open electric wires hanging on the tree entangled in his both legs due to which he got a severe shock and died on the spot on 30th August, 2003. It has further been alleged that all happened due to negligence and dereliction towards duty and lack of necessary maintenance on the part of present appellants.

Learned trial Judge in all, framed four issues, which are reproduced as under:

1. क्या दिनांक 30.8.2003 को सायं 8.30 बजे, भंवरिया खाल के पास ग्राम रामड़ी के रास्ते में पेड़ के नीचे बिजली के तार खम्बे की मैन लाईन से टूटकर पेड़ के नीचे लटकने से दोनो टकनों के टकराने से मोहनलाल की घटना स्थल पर दर्दनाक असामयिक मौत हो गयी ?
2. आया प्रार्थी के आवेदन के पैरा नं० 3 में वर्णित आधार पर कितनी क्षतिपूर्ति प्राप्त करने का अधिकारी है ?
3. क्या विपक्षी जयपुर विधुत वितरण निगम के कर्मचारियों की गफलत एवं लापरवाही एवं कर्तव्य के प्रति उदासीनता के कारण दुर्घटना होने के कथन गलत हैं ?
4. अनुतोष ?

Learned trial Judge after taking note of the material, decided issue Nos.1 & 3 in favour of the plaintiff and held that there was negligence on the part of appellants and because of which the deceased died.

So far as awarding compensation is concerned, the trial court determined income of the deceased as Rs.70/- per day and after 1/3 of deduction towards his personal expenses, Rs.1400/- were considered to be financial dependency of the family and with the aid of multiplier of 15 awarded compensation of Rs.2,52,000/- and Rs.30,000/- towards love, affection and consortium to the family and Rs.3,000/- for cremation charges, in all

Rs.2,85,000/-, which shall carry interest @6% from the date of award.

Counsel for appellants submits that there was no proof of age furnished by the respondent-claimants and the very finding recorded by the learned trial court with regard to age of the deceased as 35 yrs., is not corroborated by the evidence on record. Counsel further contends that undisputedly the deceased was labourer, even if Rs.70/- is the rate of daily wages, normal presumption can be drawn that no one gets work every day as such Rs.70/- could not have been considered as his daily wages which he was able to earn for full 30 days.

I have considered the submission made by the counsel and perused the material on record.

The incident is of August, 2003 and for unskilled labour Rs.70/- per day was the rate fixed by the Government under the Minimum Wages Act and one is capable to earn during the month on per day basis. Submission made by the counsel that wages which has been determined by the learned trial court requires interference, has no merit and hence, rejected.

So far as the age of the deceased is concerned, sufficient material has come on record and no contrary evidence was placed by the appellants. As such, I do not find any error committed by the learned trial Judge in determining the age of the deceased while awarding compensation under the impugned award.

Since there is no substance in the present appeal, I do not incline to issue notice of the application filed u/s.5 of Limitation Act.

Consequently, the appeal fails and is hereby dismissed.

Counsel submits that since warrant of attachment has been issued, some time may be granted for depositing the amount, if that be so, the compensation as awarded by the learned trial court under the impugned award, may now be deposited before the concerned authority in terms of award within a period of two weeks from today.

[Ajay Rastogi], J.

FRB